

March 21, 2003

Major Modifications from the Third Draft General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Small MS4 General Permit).

The fourth draft of the Small MS4 General Permit contains three major modifications from the previous draft. Two of those changes stem from the Ninth Circuit Court's decision in *Environmental Defense Center vs. EPA*. The decision specifies that permit applications must be made available to the public, that permit applications must be reviewed and approved prior to the commencement of permit coverage, and that the permitting authority must provide public hearings on permit applications when requested.

In response to the ruling, the General Permit outlines a process to receive, review and public notice through the internet, applications for permit coverage. This process allows for public review of permit applications and a process to request a public hearing. Unless a public hearing is requested, permit coverage will be approved or denied by the Regional Water Quality Control Board (RWQCB) Executive Officer. If a permit hearing is requested, permit coverage will be approved or denied by the RWQCB.

As a result of the process outlined above, the General Permit no longer designates non-traditional Small MS4s (Attachment 3 in the previous draft). Non-traditional Small MS4s are MS4s that are similar to MS4s serving cities and counties but are operated at other governmental facilities such as public campuses, military bases, and prison and hospital complexes, and that are located within or discharge to a permitted MS4. Instead, the General Permit retains Attachment 3 as a listing of facilities that will likely be designated by the State Water Resources Control Board (SWRCB) or RWQCB to seek coverage under the General Permit or other municipal storm water permit within the permit term. This allows RWQCBs to prioritize designations. The General Permit makes it clear that RWQCB Executive Officers have the authority to make designations subsequent to permit adoption.

The third major modification is the removal of the proposed 'safe harbor' language in the receiving water limitations contained in the Supplemental Provisions of the General Permit (Attachment 4). The receiving water limitation language was revised to be consistent with SWRCB Orders WQ 99-05 and WQ 2001-15. The fact sheet of the General Permit was revised to include language that describes the intent in implementing receiving water limitations through the permit and acknowledges that achieving compliance with water quality standards through implementation of effective best management practices may take time.

Additionally, an attachment was added to the General Permit identifying those communities that the SWRCB has determined currently meet the larger or fast-growing thresholds that subject a community to Section E, Supplemental Provisions, of the General Permit.

The SWRCB is scheduled to consider the Small MS4 General Permit for adoption at its April 30, 2003 meeting. Oral comments will be heard by the SWRCB at this time. Written comments must be received by 5:00 PM, April 21, 2003. Please submit comments to Jarma Bennett at the State Water Resources Control Board, PO Box 1977, Sacramento, CA 95812-1977 or by fax at (916) 341-5543 or by email at stormwater@swrcb.ca.gov. The SWRCB will only accept comments on the revisions being made to the fourth draft of the General Permit.